

Pacific Standard

HOME > MAGAZINE > THE FIX

MONTANA'S DARK MONEY DETECTIVE

Jonathan Motl waged a fierce campaign against unaccountable election spending in the Big Sky state. His work carries lessons for other governments grappling with the same scourge.

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Jonathan Motl walks out of the August heat and into a roadside diner somewhere between Missoula, Montana, and his hometown of Helena. He sits down, says hello to the proprietor, and orders a cheeseburger, a bowl of soup, and a soda. Word has just arrived that the state Supreme Court has ruled in his favor, and Motl, a slim, tan man with a channeled brow and charcoal hair, is ready to celebrate.

"It's the first verdict against an elected official in Montana in 75 years," he says.

He slurps his soup.

"It's a good day for Montana."

Montana—that last best place—is defined by superlatives. It is known and admired for its sprawling wildlands, its famously accessible trout streams, its grizzly bears and gray wolves and bison herds. Even the state's politics can have an old-timey open feel.

With a long history of anti-corporate populism and intimate electoral campaigns, Montana is the sort of place where you might bump into your senator at a coffee shop or spot your legislator on a dating site. It's the sort of place where you can run for office without a war chest and still stand a chance. It's a place with just a million people and little tolerance for big money meddling.

And that's where Motl has made his mark. As the former commissioner of political practices here, he has spent four years serving as the state's primary campaign finance watchdog. With the backing of Governor Steve Bullock, he has traced the flow of dark money into campaigns for the state legislature and filed dozens of lawsuits against unscrupulous elected officials. He has fought in both state and federal courts to protect the integrity of Montana's elections and has battled with the state legislature to win and preserve his office. He has become the tenacious scourge of dark money in Montana politics, and, in doing so, has set a bold example for other states across the nation that are also contending with the noxious influence of unaccountable election spending.

In the spring of 2017, Bullock [took to the op-ed page](#) of the *New York Times* to declare that anonymous corporate campaign expenditures are "now illegal in Montana, and we are bringing, and winning, legal actions against the bad actors." He was talking, at least in part, about Motl's work.

On this late summer afternoon, that work has dispensed its biggest prize to date: a ruling by the state's Supreme Court upholding a conviction against a prominent Republican state legislator named Art Wittich for corruption and violation of campaign finance laws. It was Motl's office that brought the unprecedented lawsuit and labored under a thundercloud of partisan criticism as it pursued that case and others like it over a four-year period. The high court's ruling was a vindication and a climactic moment in Montana's anti-corruption efforts.

"If you are going to protect the freedoms that we have in Montana—the freedoms to fish and speak and run for office," he says, "it starts with the political system, keeping it fair."

And so, yes, celebration is in order. Motl pays his bill, hops in his car, and heads down an empty country highway. It is time now to exercise that most essential of Big Sky liberties. It's time to go wade in a river and catch some trout.

After a short drive through a spacious valley, Motl turns onto a dirt embankment next to the Little Blackfoot River, a clean, clear watercourse that flows down from the Continental Divide through forested mountains and private ranchland before discharging into Montana's mighty Clark Fork. Rivers like this drew Motl, the son of a Minnesota farmer, out West decades ago. It is one of his favorite fishing spots—he comes here to relax and to remind himself what is at stake.

"We are always just one or two votes on the Montana Supreme Court from losing public access to rivers like these," he says. "That is high in the consciousness of a substantial number of Montanans."

Indeed, Motl has helped deepen that consciousness. During his tenure, his office exposed an underhanded scheme involving a network of 14 people, including two super-wealthy Montana property owners—the billionaires Charles Schwab and James Cox Kennedy—to quietly influence the outcome of a 2012 election for the state Supreme Court. Schwab and Kennedy collectively poured \$400,000 through a tax-exempt organization called the Montana Growth Network in order to boost the prospects of their preferred candidate, a conservative lawyer named Laurie McKinnon. During the time of their election meddling, Kennedy had an active case before the court in which he was trying to restrict public access to the streams that flow through his vast Montana estate; Schwab has a history of similar cases. Their political involvement appeared to be a direct effort to shift the court in a more conservative direction and thus influence the outcome of what were then ongoing cases.

Motl got wind of their dark money donations only later—after the election had ended and McKinnon had taken her seat on the court. Nevertheless, he subpoenaed the Montana Growth Network for its bank records and discovered the funding from Schwab and Kennedy. When the news went public in late 2015, it made headlines across the state and eventually the nation.

The scheme, it turned out, had been partly illegal since some of the Montana Growth Network's advertisements had explicitly advocated for McKinnon, and the group had failed to disclose these expenditures as required by law. The scheme was also an example of the new power of the ultra-rich in the post-*Citizens United* era. Though McKinnon's electoral victory was ultimately not enough to sway the court's stance on public stream access, it was still an example of how very rich people could anonymously funnel money into front groups in order to purchase political power. It was a chilling reminder of the peril Montanans face as big money donations aim to bend local politics to the will of the wealthy.

"Montanans are going to wake up one of these days and they won't be able to go to the river to fish," says John Gibson, the former long-time president of the Public Land/Water Access Association who has spent decades litigating to prevent the privatization of public resources. Dark money spending "is an erosion of the public trust," he says. "It is real, and it is scary."

This threat, says Motl, "is why we need a political process that protects the interests of regular people and not special interests."

Motl scrambles down the bank into the Little Blackfoot River, with its late summer flow winding sluggishly between willowed banks. His fly-fishing rod in hand, he makes his way upstream, marching through shallows toward deep holes where the trout hunker. A rancher owns the land on both sides of the river, Motl says, but the man understands the public access laws and doesn't bother people unless they step out of the streambed and onto his property. People here respect the public interest.

But things are changing. They have changed already.

"Six years after *Citizens United* enabled unfettered spending in our elections, the use of so-called dark money has become disturbingly common," wrote New York University's Brennan Center for Justice in a 2016 report on dark money in state politics. "Contrary to the Supreme Court's assumption that this unlimited spending would be transparent to voters, at the federal level powerful groups have, since 2010, poured hundreds of millions of dollars into influencing elections while obscuring the sources of their funding." In an analysis of six states—Alaska, Arizona, California, Colorado, Maine, and Massachusetts—the group found that dark money spending in local elections was 38 times higher in 2014 than it was in 2006, before the *Citizens United* ruling reshaped American politics.

Motl's new victory in the state Supreme Court came battling against the same disturbing trend: In 2010, a powerful Virginia-based organization called the National Right to Work Committee threw its considerable weight behind 23 Republicans in primary elections for the Montana state legislature. That committee and its local third-party allies allegedly ran a coordinated campaign on behalf of the politicians, sending field operatives to the state to create campaign materials, crunch voter data, and help teach its hand-selected candidates how to run for office. And they did it without disclosing their operations or funding to Montana election officials, as required by law.

Motl has called the effort a "coordinated, funded, centralized corporate-takeover" of the political process. And in a place where the state legislative races often cost less than \$20,000, it made a difference.

Eight of National Right to Work's favored candidates won, significantly changing the balance of power in the state legislature by shifting the Republican Party to the right. Among the victors was a man named Art Wittich, who eventually went on to become the state senate majority leader.

When Motl left private practice to become Montana's election watchdog in 2013, the office had little funding and an enormous backlog of cases and complaints. Still, he began to investigate the 2010 electioneering scheme right away. It was too important to let linger any longer. And he was soon rewarded for his efforts with a major turn of sheer luck. In a plot twist worthy of a pulp thriller, he got his hands on a trove of insider documents that were discovered in a drug house in Denver in 2011.

The documents would come to reveal detailed information about the relationship between the National Right to Work Committee, its operatives on the ground in Montana, and the candidates it supported. They included things like fliers and letters that National Right to Work had produced on behalf of the candidates it surreptitiously supported in 2010. The documents also included a memorandum that described National Right to Work's operations in Montana as a "shock and awe electoral bombing campaign," according to Motl.

"[The documents] ended up in a Democratic Party office in Colorado, who shipped them here" to Montana, he says. By the time he took office in 2013, the documents were in the FBI office in Missoula. "I had to go through all their security to get in there," he says, "but there was enough in there ... to discover the true extent of National Right to Work's involvement" in the state.

Motl combed through the cache of documents in the summer and fall of 2013, and, by winter, began filing decisions against nine of the candidates involved in the scheme, as well as the National Right to Work Committee and its subsidiaries. An intense legal and political fight ensued. In 2015, a number of Republicans tried to block Motl's confirmation in the state senate, hoping to end his tenure early and sap the strength of his office. And, in early 2017, a few of the politicians under investigation introduced a bill in the legislature to shut down the Commissioner of Political Practices office altogether. Both efforts failed.

Motl, on the other hand, ultimately prevailed. He settled with five of the candidates in the compromised 2010 primaries and brought civil cases against Wittich and three others. He also brought a case against National Right to Work, which is ongoing. And his work ultimately helped build support for the Montana Disclose Act, a 2015 law that forced dark money election spending out of the shadows by strengthening financial disclosure requirements in the state.

On the day I met him in the diner by the dusty highway, he had just received news that the Montana Supreme Court had upheld a jury verdict against Wittich in which the former state senator was fined more than \$68,000. Wittich continues to proclaim his innocence and frames the case against him as a politically motivated hatchet job. But Motl, who is neither a Democrat nor a Republican, says his work was entirely about protecting the public interest.

"The 2016 elections were remarkably clean," he says with a public servant's earnest pride. "The cleanest, most people said, in a decade."

Motl's legacy in Montana is as heartening as it is simple: Election laws can work. Courageous public servants can protect the people's interests. Big money can be beaten.

"In our review of the dark money problem all over the country, we have found that the thing that makes a big difference is a government agency that sets a tone for compliance," says Chisun Lee, senior counsel at the Brennan Center for Justice. Such an agency "sends a message to donors and candidates that the laws on the books are being taken seriously."

Motl says he was simply doing what any decent citizen would do.

"I never felt like I was out of step," he says. "To tell you the truth, I always felt like most Montanans would have done what I was doing—they really would have—if they had been in my position."

Motl and I fish together for a few hours. We trudge along the Blackfoot's braids and bends as smoke from the late summer wildfires sits heavy on the air and the sun fades. Deer dart out of the brush. Crickets chirp and hum.

We don't have much luck. The water is too low, too warm. We hardly get a nibble and we decide to head home.

As we walk back toward Motl's car, past the promising holes that haven't produced, past that old rancher's private land with its barbed-wire boundaries, we know we can always come back. As long as Motl has his way, the river will remain open and accessible to the people, no matter the size of their checkbooks. Montana's public access, its public interest laws, its political system are protected from the corrupting influence of big money. Protected—at least in part, at least for now.